IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO. 1239

JOHN GIAGNOCAVO
Appellant

VS.

BUCKS COUNTY COMMISSIONERS:
Joseph Canby
Walter Farley
Charles Meredith III
Appellees

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

OPPOSITION TO APPELLEES MOTION TO DISMISS

TO THE HONORABLE JUSTICES OF THE SAID COURT:

The Appellant, John Giagnocavo, respectfully urges this Honorable Court to deny the Appellees Motion to Dismiss. The reasons are as follows:

In response to the Appellees' Motion to Dismiss, the contention of 1. A is denied. The Appeal in the United States Supreme Court was timely filed. The authority for Appeal from a final judgment is found in Statute 28 U.S.C. Sec. 1257, para.2, and the time for appeal is found in 28 U.S.C. Sec. 2101 (c). A Petition for a Re-hearing was filed within ten days of the decision of the lower court, and the final judgment was rendered on October 9, 1969. The Motion is attached hereto and marked Appendix B-1.

Paragraph 1. B is likewise without merit, as February 23, 1970 was a legal holiday; therefore, date for timely filing was on February 24, 1970, pursuant to Rule 34 of the United States Supreme Court Rules.

The interpretation of the foregoing acts, relative to timely appeals is specifically spelled out in the case of United States v. Healy, 376 U.S. 75, 84 S.Ct.553, 11 LEd 2nd 527:

> "The period for seeking review by the United States Supreme Court in a civil case whether by appeal or by certiorari begins to run from date of the lower courts denial of the appealing party's petition for a re-hearing rather than from the date of the lower courts original entry of judgment, where the petition for a re-hearing is filed in the lower court within the period allowed for appealing from the original judgment."

In response to Paragraph 2 of the Appellees' Motion, it is denied. The federal questions sought to be reviewed were raised in the original pleadings of both Equity No. 783, March Term, 1969, and its amendment, No. 2018, March Term, 1969. Both Complaints were initiated by a Rule to Show Cause which were signed by the Court as to why a preliminary injunction should not issue. Neither were properly answered by the Appellee. There is no provision under the Pennsylvania Rules of Civil Procedure to file preliminary objections to a Rule to Show Cause when the Plaintiff, (or Petitioner) objects. The Plaintiff specifically objected - see page 3 of the transcript of April 17, 1969, before the Honorable Edmund V. Ludwig.

Incidentally, Judge Ludwig did approach Peter Glascott, Counsel for the Appellee, privately, in the lawyers lounge, about setting the preliminary objections down for immediate argument. The Appellees declined to take up the challenge.
Therefore, under Pennsylvania law the preliminary objections are null and void. See Consolidated Real Estate Co. v. Northumberland Co. 80 D & C 279.

In response to Appellee's Motion, Para.2, C,D, it is expressly denied that the Pennsylvania Supreme Court's dismissal rests completely on a non-federal basis.

The Bucks County Court specifically upheld the validity of Act 247 of the 1968 General Assembly. Onpage 56 of the transcript of April 24, 1969, under Judge Paul R. Beckert, the Attorney for the Appellee stated,

> " Mr. Giagnocavo has raised very fundamental questions here regarding the constitutionality of this Act and the County's proceed- under the Act,... ".

There is no question that the federal questions existed, not only in the Bucks County Court but also in the Pennsylvania Supreme Court. The Appellee has stated no statute or rule which the Appellant has ignored, therefore, the Appellant avers there is none; also the transcripts from the Bucks County Court were not available to the Appellant until after the appeal was dismissed.

> " It is settled that a state court may not avoid deciding federal questions and thus defeat the jurisdiction of this court by putting forward non-federal grounds of decision which are without any fair or substantial support." Wolfe v. North Carolina, 364 US 177 L Ed 2d 1030.

> " Of course a federal question is involved if the adequacy of state procedural bars to the assertion of federal questions is itself a federal question." Douglas v. State of Ala. Ala. 1965,85 S. Ct. 1074, 380 U.S. 415, 13 L Ed.2d 934. Also Henry v. State of Miss., 1965 85 SCt. 564, 379 U.S. 443, 13 L Ed, 2d 408.

In response to Paragraph 3 of the Appellee's Motion to Dismiss, this also is denied.

The question before this Court is the constitutionality of Act 247, known as the Pennsylvania Municipalities Planning Code, which the Appellee has reference thereto, and the Bucks County Comprehensive Plan.

The reference to the validity of the Milford Township Zoning Ordinance is not the question before this Court. The document entitled "Injunction" as referred to on page6 of Appellant's Jurisdictional Statement has not been disposed of by the Bucks County Court.

See Hudson Dist. v. Eli Lilly & Co.,377 U.S 386.

> " An affirmative by a states highest Court of a judgment declaring that a state fair trade act does not violate the state constitution or the Federal Constituiton is not rendered non-final and unappealable to the Supreme Court of the United States under 28 USC 1257, by the fact that separate and unresolved issues are pending in the state courts and are subject to further proceedings therein on a cross petition."

This same basic legal principle is applicable in this instant case.

CONCLUSION

There is no legal basis for the Appellee's Motion to Dismiss and Appellee has stated no authorities; therefore, in light of the foregoing the Appellant respectfully requests this Honorable Court to dismiss the Appellee's Motion to Dismiss Appeal in this instant case.

Respectfully submitted,

John Giagnocavo,
Appellant

Quakertown, R.D.2
Penna. 18951

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

APPEAL No 63 JANUARY TERM,1970

JOHN GIAGNOCAVO :

MARCH TERM,1969

VS. : COURT OF COMMON PLEAS OF BUCKS

NO. 783 COUNTY

BUCKS COUNTY COMMISSIONERS:
JOSEPH CANBY :
WALTER FARLEY
CHARLES MEREDITH III :

IN EQUITY & MANDAMUS

PETITION FOR RE-ARGUMENT (RECONSIDERATION)
RE: DISMISSAL OF APPEAL FROM APPEAL NOS.63 &44

COMES NOW the Appellant and moves this Honorable Court to rescind the Orders dismissing Appeal Nos. 63 and 44, for the following reasons, and also to consolidate Appeal No. 44 with Appeal No. 63.:

1. The Supreme Court of Pennsylvania has mandatory jurisdiction in all appeals from the refusal of the Court of Common Pleas to grant an injunction. See 12P.S.Sec. 1102, 1879,June 12, P.L. 177 Sec.1. " In all cases in equity, in which a special or preliminary injunction has been refused by any court of common pleas, an appeal to the supreme court for the proper district shall be allowed, but the pendency of such appeal shall not suspend proceedings in the original suit; and all such appeals shall be heard by the supreme court in any district in which it may be in session, as is provided in cases in equity originating in the supreme court."

2. Attached hereto is an Order as received by the Appellant on August 20,1969, and marked Exhibit A-1.

3. The Bucks County Court of Common Pleas denied an injunction requested by Appellant on April 24,1969, in equity in Case No 783, March Term, 1969. It is admitted that equity and mandamus are together in this particular action. However, the injunction was the equity part of the action for which mandamus was insufficient. This injunction was refused by Judge Paul Beckert, on April 24,1969.

APPENDIX B-1

4. On April 29, 1969, Judge Issac S. Garb refused an application for an injunction , but refused to put the denial in writing or on record. See paragraph 3 of Appellant's STAY OF PROCEEDINGS, Appeal No. 44 . Also see copy of Sheriff return, Exhibit A-2, attached hereto.

5. On May 16, 1969, Bucks County Court of Common Pleas through Judge Bodley refused to issue a preliminary injunction Attached hereto is a copy of the requested relief sought on that particular date., and marked Exhibit A-3.

6. In paragraphs 3,4 and 5 of the foregoing, it is crystal clear that the Court denied and refused a preliminary injuncti for the benefit of the Appellant.

7. This Court has authority by its Rule 37 to order Appeal to be consolidated.

8. It is alleged or inferred by the Appellee in Paragraph One, under New Matter in the ANSWER TO PETITION FOR STAY OF PROCEEDINGS that the issues of Appeal 44 are the same as the Action 783, now Appeal 63, so therefore Appellant h requests that Appeals be combined.

9. The grave issues in the two appeals involve rights to the Appellant which are guaranteed in the United States and Pennsylvania constitutions. To deny a hearing on appeal would be to deny Appellant equal protection, as well as due process of law.

10. It is imperative that appeals be granted because of the denial of the lower court to furnish transcripts to the Appellant as per 12 P.S. 1198.

WHEREFORE, Appellant requests that the Order of August 1 1969, be rescinded, and the Appeals be allowed, and that Appe No. 44 be consolidated with Appeal No. 63.

Respectfully submitted,

John Giagnocavo

John Giagnocavo,Appellant

Affirmed and subscribed
before me this 5
day of August,1969.

MARY R. FEIRICK, NOTARY PUBLIC
SOUDERTON BOROUGH
MONTGOMERY COUNTY
MY COMMISSION EXPIRES APR. 19, 1973

Supreme Court of Pennsylvania
Eastern District

PATRICK N. BOLSINGER
PROTHONOTARY
GEORGE W. DUNN, JR.
DEPUTY PROTHONOTARY

PHILADELPHIA, PA. 19107

August 19, 1969

Samuel S. Grary, Jr., Esq.,
County Solicitor - Bucks County,
521 Administration Building,
Doylestown, Pennsylvania 18901

In Re: John Giagnocavo, Appellant vs.
Bucks County Commissioners, Joseph Canby,
Walter Farley, and Charles Meredith, III
Nos. 44 and 63, January Term, 1970

Dear Mr. Gray:

This is to advise that the following Order has been endorsed on the Petitions to Dismiss the Appeals, filed on behalf of the Appellee in the above captioned cases:

"Aug. 18, 1969.

Petition granted.

s/ Per Curiam."

Pursuant to the said orders, the appeals have been dismissed of record with this Court, and Certificates thereof, together with the Record, will be sent to the Court of Common Pleas for the County of Bucks, at Nos. 2018, March Term, 1969, and 783, March Term, 1969, in due course.

Enclosed herewith is an Invoice, in triplicate, in the amount of $4.00 to cover the cost of issuing the Certificates of Orders. Please remit by return mail.

Very truly yours,

Patrick N. Bolsinger
Prothonotary

PNB:ENT

Enclosure

cc: Mr. John Giagnocavo,
R. D. #2,
Quakertown, Pennsylvania 18951

A-1

A-1

TO THE HONORABLE, THE JUDGE WITHIN NAMED.

Bucks County

ss:

I, F. R. Tettemer, Chief Deputy Sheriff, do hereby certify and return that I served the within Request for Injunction, Rule to Show Cause and Complaint in Equity on the Bucks County Commissioners, Joseph Candy, Walter Farley, and Charles Meredith III, the within named defendants, by handing personally to Franklin Pursell, Chief Clerk, the person in charge for the time being, at the office and place of business, Broad & Court Streets, Doylestown Borough, Bucks County, Pennsylvania, on April 29th, 1969, at 10:15 o'clock A.M., E.D.S.T., a true and attested copy of the within Request for Injunction, Rule to Show Cause and Complaint in Equity, with a notice endorsed thereon to the defendantsto file an answer within twenty days from service hereof, and making known to him the contents thereof.

So answers.

F. R. Tettemer
Chief Deputy Sheriff.

Affirmed and subscribed to before me this 1st day of May A.D. 1969.

Deputy Prothonotary.

Charles G. Jones
Sheriff.

A-2

EXHIBIT A-2

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

JOHN CIAGNOCAVO :

V. : Term March, 1969

BUCKS COUNTY COMMISSIONERS: : No. 2018
Joseph Canby
Walter Farley
Charles Meredith III : In Equity

ORDER

AND NOW, this _____ day of May, 1969, it is hereby ordered that the Bucks County Commissioners be restrained from enforcing the Bucks County Zoning Ordinance, until further order of the Court.

_____
J.

The relief sought by this motion is hereby refused and the motion is dismissed

May 16, 1969 J. Boddy
J.

A-3

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

JOHN GIAGNOCAVO :

TERM March 1969

V. :

No. 2018

BUCKS COUNTY COMMISSIONERS:
Joseph Canby :
Walter Farley
Charles Meredith III : In Equity

MOTION TO MAKE RULE RETURNABLE MAY 12, 1969, ABSOLUTE, AND ISSUE PRELIMINARY INJUNCTION

TO THE HONORABLE JUDGES OF THE SAID COURT:

COMES NOW the Plaintiff and asks this Honorable Court to make the Rule absolute, and that a preliminary injunction be granted restraining the Bucks County Commissioners from enforcing the Bucks County Zoning Ordinance which is scheduled to be effective May 19, 1969.

1. Defendant(s) failed to respond to Rule to Show Cause why an injunction should not issue.

2. Plaintiff gave notice by letter, personally handing the original to Mr. Peter Glascott, Assistant County Solicitor, copy attached hereto and marked Exhibit 1.

3. Affidavits attached hereto prove the fatal defect arising from no adequate constructive notice to the populace; and that the Plaintiff has capacity and standing to sue.

XXXXXXXXX

WHEREFORE THE PLAINTIFF will be subject to criminal penalties if the Bucks County Zoning Ordinance is allowed to go into effect, and if Plaintiff exerts his constitutional rights, and will therefore suffer irreparable harm for which there is no adequate remedy at law.

THEREFORE, Plaintiff requests that the Rule be made absolute and that the Preliminary Injunction be issued.

Respectfully submitted,

John Ciagnocavo
Quakertown, Penna.
R.D.2

STATE OF PENNSYLVANIA :
ss.
COUNTY OF BUCKS :

John Ciagnocavo, being duly affirmed according to law, deposes and says that he is the Plaintiff above named and that the facts set forth in the foregoing are true and correct to the best of his information and belief.

John Ciagnocavo

Subscribed and affirmed
before me this 16th
day of May, 1969.

Thomas P. Wackernagel
Justice of the Peace

AFFIDAVIT

I hereby certify to the Bucks County Court that I have personal knowledge that the Bucks County Commissioners did not publish the required legal notice in newspapers of general circulation in the township of Milford, located in Bucks County, or in any newspaper which has general circulation throughout the County, on the Bucks County Comprehensive Plan; nor to the best of my knowledge was any notice in any newspaper given as to where a copy of said Comprehensive Plan was available for inspection, either prior to March 12, 1969, or there after, and further, I do have information firmly believed to be highly reliable and believed to be absolutely true that there was no Comprhensive Plan in its entirety as adopted by the Bucks County Commissioners consistently available for inspection by the general populace or for sale or free, prior to March 12, 1969.

Ruth Giagnocavo

Ruth Giagnocavo
Quakertown, R.D.2, Penna.

State of Pennsylvania :
ss.
County of Bucks :

Subscribed and affirmed
before me this 16th
day of May, 1969.

Thomas P. Blackburn
Justice of the Peace

EXHIBIT 2

AFFIDAVIT

I hereby certify to the Bucks County Court that I have personal knowledge that the Bucks County Commissioners did not publish the required legal notice in newspapers of general circulation in the township of Milford, located in Bucks County, or in any newspaper which has general circulation throughout the County, on the Bucks County Comprhensive Plan; nor to the best of my knowledge was any notice in any newspaper given as to where a copy of said Comprehensive Plan was available for inspection, either prior to March 12, 1969, or thereafter, and further, I do have information firmly believed to be highly reliable and believed to be absolutely true that there was no Comprehensive Plan in its entirety as adopted by the Bucks County Commissioners consistently available for inspection by the general populace or for sale or free, prior to March 12. 1969.

George K. Brauer
George K. Brauer
Perkasie, Penna.

State of Pehnsylvania :
ss.
County of Bucks :

Sworn and subscribed
before me this 16th.
day of May, 1969.

Fred L. Krieger

FRED L. KRIEGER
NOTARY PUBLIC
EAST ROCKHILL TOWNSHIP
BUCKS COUNTY, PENNA.
MY COMMISSION EXPIRES
FEBRUARY 1, 1971